

Remarks/Arguments

Claims 1-13 and 15-82 are pending in the application. Claims 43-46 are allowed. Claims 1-13, 15-18, 21, 23-42, and 47-82 are rejected. Claims 19, 20, and 22 are objected to. Claims 1-15, 26, 36-37, 40-42, 47-50, 52-72, 78, and 79 are cancelled. New claims 83-91 are added.

Applicant has amended the objected to claims to place them in independent and allowable form. Among these is claim 43. The last paragraph of this claim has been deleted because it is unnecessary to distinguish over the prior art based on the reasons indicated for the allowability of certain claims.

Applicant has changed a number of claim dependencies of rejected claims to now use an allowable independent claim as a base claim. Certain rejected independent claims, namely claims 24, 80, and 81 have been amended to recite the features of the allowable claims that the Examiner indicates distinguish over the prior art.

Claims 51 and 83 are the proposed claims referred to in the Interview Summary of November 4, 2004 that the Examiner indicated are allowable. Claim 84 was a proposed dependent claim from claim 83, and therefore should also be allowable. Claims 85-91 are directed to methods and computer readable media. These claims parallel claims 51 and 83 and should also be deemed allowable.

Claim Rejections Under 35 U.S.C. § 101

Claims 15, 40, 43, 72, and 79 are rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter. Applicant has addressed the rejection by specifying in the relevant, uncancelled claims that the methods are "computer implemented".

Claim Rejections Under 35 U.S.C. §§ 102 & 103

Claim 1 is rejected under 35 USC 102(b) as being anticipated by College Course provided by Michigan State University, Advertising and Public Relations Research, Fall 1988. Claims 1-13, 15-17, 21, 23-28, 30-42, 47-68, 72, and 75-82 are rejected under 35 USC 102(a/b) as being anticipated by Dreze et al. Claims 1, 15, and 54 are rejected under 35 USC 103 as being unpatentable over Louviere in view of Dreze et al., Testing Web Site Design and Promotional Content, August 18, 1998. Claims 1 and 54 are rejected under 35 USC 103(a) as being unpatentable over Louviere in view of Tse et al. Video Browsing User Interface Designs: Effectiveness in Information Seeking Tasks, May 1998. Claims 18, 29, 69-71, and 73-74 are rejected under 35 USC 103(a) as being unpatentable over Dreze in view of Hertz (US 6,460,036).

Applicant has canceled or amended the relevant claims. Applicant's actions should not be construed in acquiescing in any ground for rejection. Applicant is merely seeking early issuance of subject matter deemed allowable and reserves the right to seek the subject matter of the rejected claims in a continuing application. Although the rejections are believed to be moot in view of the claim amendments herein, Applicant wishes to make of record the following remarks concerning the cited prior art:

- §102/College Course MSU—this reference cannot be considered an enabling anticipating disclosure; it's merely a question without any guidance as to how a solution might be implemented. Further, the reference contains no teaching of "automated" or of an allocator module, as claimed.
- §102/Dreze—no teaching of an automated system for control of content elements and determining the optimal treatment. (See discussion below.)
- §103/Louviere/Dreze—nothing in Louviere teaches or suggests computer implementation or experiments based on content and content elements.
- §103/Louviere/Tse—nothing in Louviere teaches or suggests computer implementation or experiments based on content and content elements.

(The foregoing is not necessarily a comprehensive listing of all distinctions and arguments; Applicant reserves the right to assert further distinctions and arguments.)

The prior art does not teach an automation as Applicant has claimed. In the Interview Summary dated October 19, 2004, the Examiner considered the "specifically designed software" mentioned on the first full paragraph on page 14 as teaching automation. However, that passage does not define any steps performed by the software and therefore cannot anticipate or enable any recited steps of Applicant's claims. Alternatively, the Examiner declined to give patentable weight to the recitation of "automatically" (and like terminology), citing *In re Venner*, 262 F.2d 91, 94, 120 USPQ 192, 194 (CCPA 1958) for the per se proposition that automating a manual activity would not add a patentable distinction to a claim. Applicant respectfully submits that *Venner* is an outdated case: it has been overruled by the Federal Circuit and the Board of Patent Appeals and Interferences, to the extent it may have once stood as stating a per se rule:

"In the present case, unlike in *Venner*, the examiner has not provided a reference which discloses a high speed rotary power tool, let alone one which is used for cleaning glass. The examiner has merely relied upon a per se rule that providing a mechanical or automatic means to replace manual activity which has accomplished the same result is unpatentable. As stated by the Federal Circuit in *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995), "reliance on per se rules of obviousness is legally incorrect and must cease." Moreover, as correctly pointed out by the appellant (brief, pages 4-5), the examiner has not established that manual rubbing accomplishes the same result as a rotary power tool."

In re Brouillet, 2001 WL 1339914 (Bd.Pat.App & Interf., Apr 12, 2001) (Copy attached.)

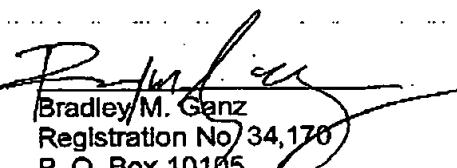
CONCLUSION

Applicant submits that in view of the foregoing remarks and/or amendments, the application is in condition for allowance, and favorable action is respectfully requested. The

Commissioner is hereby authorized to charge any fees, including extension fees, which may be required, or credit any overpayments, to Deposit Account No. 50-1001.

Respectfully submitted,

Date: November 9, 2004


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Serial No. 09/648,429

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